

Election/Restrictions

Claims 33-41, 43-46, 48-54 and 65-69 allowable. The restriction requirement among the inventions, as set forth in the Office action mailed on 06/19/2009, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn.** In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Claims 55-64 are rejoined.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Arthur Crawford on 10/5/2010.

The application has been amended as follows:

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In the Specification:

The following was inserted in the line after line 16 which reads "nm in a 0.7 μ M solution)."

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Brief Description of the Drawings

Fig. 1 shows a glucose response curve.

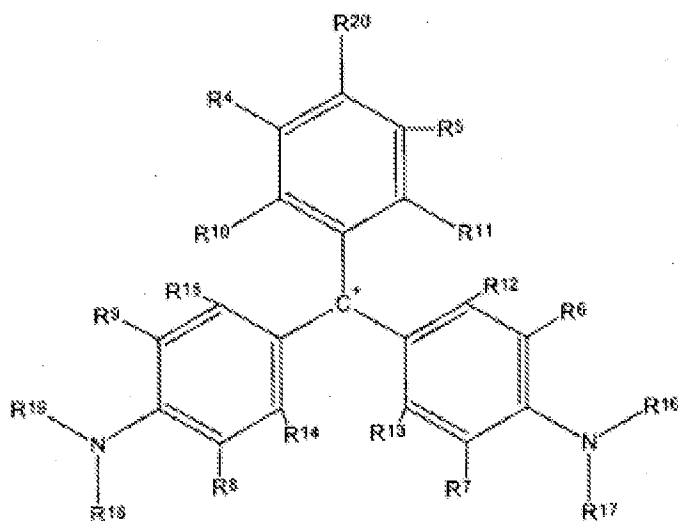
Fig. 2 shows a normalized spectrum of AF594 and HCMCV-1-dextran. --

In the Claims

Claims 42, 47, 58 and 64 were cancelled.

Claim 55 was replaced by the following:

-- 55. A dye compound having the formula:



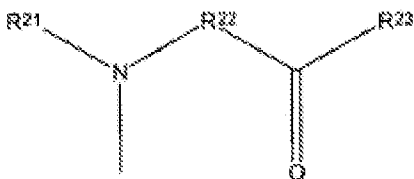
wherein:

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R^4 , R^5 , R^6 , R^7 , R^8 and R^9 are each independently H, halogen, alkyl, aryl, O-alkyl or S-alkyl and R^{10} , R^{11} , R^{12} , R^{13} , R^{14} and R^{15} are each independently hydrogen, O-alkyl, S-alkyl, or alkyl, or one or more pairs of groups R^4 and R^{10} and/or R^5 and R^{11} and/or R^6 and R^{12} and/or R^7 and R^{13} and/or R^8 and R^{14} and/or R^9 and R^{15} is a bridging group consisting of aryl, alkylene, O-alkylene, S-alkylene or N-alkylene optionally substituted with one or more of SO_3^- , PO_3^{2-} , OH, O-alkyl, SH, S-alkyl, COOH, COO^- , ester, amide, halogen, SO-alkyl, SO_2 -alkyl, SO_2NH_2 , SO_2NH -alkyl, SO_2N -dialkyl, SO_3 -alkyl, CN, secondary amine or tertiary amine, provided that not all of R^{10} , R^{11} , R^{12} , R^{13} , R^{14} and R^{15} are hydrogen; R^{16} , R^{17} , R^{18} and R^{19} are each independently H, alkyl or aryl, or one or more of R^{16} and R^{17} or R^{18} and R^{19} is alkylene, optionally substituted with one or more of SO_3^- , PO_3^{2-} , OH, O-alkyl, SH, S-alkyl, COOH, COO^- , ester, amide, halogen, SO-alkyl, SO_2 -alkyl, SO_2NH_2 , SO_2NH -alkyl, SO_2N -dialkyl, SO_3 -alkyl, CN, secondary amine or tertiary amine; or one or more of pairs of groups R^6 and R^{16} , R^{17} and R^{17} , R^8 and R^{18} , and R^9 and R^{19} is alkylene, O-alkylene, S-alkylene or N-alkylene optionally substituted with one or more of SO_3^- , PO_3^{2-} , OH, O-alkyl, SH, S-alkyl, COOH, COO^- , ester, amide, halogen, SO-alkyl, SO_2 -alkyl, SO_2NH_2 , SO_2NH -alkyl, SO_2N -dialkyl, SO_3 -alkyl, CN, secondary amine or tertiary amine

and

R^{20} is a linker element selected from the group consisting of an active ester, an isothiocyanate, an acid chloride, an α -halogenated ketone, an azide and an amine of the formula:



R²¹ is H or alkyl or aryl optionally substituted with one or more of SO₃⁻, PO₃²⁻, OH, O-alkyl, SH, S-alkyl, COOH, COO⁻, ester, amide, halogen, SO-alkyl, SO₂N-dialkyl, CN, secondary amine or tertiary amine and R²² is alkylene, O-alkylene, S-alkylene or N-alkylene or R²¹ and R²² are part of a ring, optionally substituted with one or more of SO₃⁻, PO₃²⁻, OH, O-alkyl, SH, S-alkyl, COOH, COO⁻, ester, amide, halogen, SO-alkyl, SO₂NH₂, SO₂NH-alkyl, SO₂N-dialkyl, SO₃-alkyl, CN, secondary amine or tertiary amine and

R²³ is *o*-succinimidyl, *o*-pentafluorophenyl, Cl or α -halogenated alkyl; and optionally comprising a counterion. --

Claim 61 was replaced by the following:

-- 61. A method of detecting or measuring an analyte with a reagent as claimed in

Claim 33, comprising the steps of:

contacting the reagent with a sample;

illuminating the reagent and sample with light of wavelength within the absorption spectrum of the fluorescent energy donor;

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detecting non-radiative energy transfer between the energy donor and energy acceptor by measuring the fluorescence of the energy donor; and

correlating the fluorescence measurements with the presence or concentration of the analyte. --

In claim 62, at line 2, "measuring" was deleted.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SUSAN HANLEY whose telephone number is (571)272-2508. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Susan Hanley/
Examiner, Art Unit 1651